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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/066,436	01/30/2002	Steve G. Baker	ENDOV-59271	5619
24201	7590 06/17/2003		_	
FULWIDI	ER PATTON LEE & UT	EXAM	EXAMINER	
6060 CEN	HUGHES CENTER TER DRIVE	BARRETT,	BARRETT, THOMAS C	
TENTH FLOOR LOS ANGELES, CA 90045			ART UNIT	PAPER NUMBER
			3738	7
			DATE MAILED: 06/17/2003	}

Please find below and/or attached an Office communication concerning this application or proceeding.

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9) The specification is objected to by the Examiner.  10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  11) The proposed drawing correction filed on is: a) approved b) disapproved by the Examiner.  If approved, corrected drawings are required in reply to this Office action.  12) The oath or declaration is objected to by the Examiner.  Priority under 35 U.S.C. §§ 119 and 120  13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f):  a) All b) Some * c) None of:  1. Certified copies of the priority documents have been received.  2. Certified copies of the priority documents have been received in Application No  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  a) The translation of the foreign language provisional application has been received.  15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.		Application No.	Applicant(s)					
This MAILING DATE of this communication appears on the cover sheet with the correspondence address   Period for Reply	Office Action Summany	10/066,436	BAKER ET AL.					
The MALING DATE of this communication appears on the cover sheet with the correspondence address → Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MALING DATE OF THIS COMMUNICATION.  Educations of an may be available under the provisions of 3 CPR 1.13(a). In no event, however, may a rapy be sinely liked to the communication.  Figure 1 of the period for reflection may be available under the provisions of 3 CPR 1.13(a). In no event, however, may a rapy be sheep liked to the communication of the period for reply within the statutory period all apply within the statutory period all apply and the legislate (MONTH) from the maling date of this communication.  Figure 2 of the period for reply statution and statutory period all apply and the legislate (MONTH) from the maling date of this communication.  Figure 3 of the period for reply statution and the statutory period all apply and will replie (MONTH) from the maling date of this communication.  Figure 3 of the statution of the communication of the communication.  Priod 2 of the statution of the statution of the statution of the communication of the communication of the communication of the communication.  As a claim (s) 22.32 is/are pending in the application.  4a) Of the above claim(s) is/are allowed.  Claim(s) 22.32 is/are pending in the application.  4a) Of the above claim(s) is/are withdrawn from consideration.  Claim(s) is/are objected to.  B) Claim(s) 22.32 is/are rejected.  The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  The proposed drawing correction filed on is/are: a) accepted or b) objected to by the Examiner.  Figure 4 of the cath of declaration is objected to by the Examiner.  Priority under 35 U.S.C. §§ 119 and 120  13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C	Office Action Summary	Examiner	Art Unit					
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Editions of time may be available under the procession of 37 CFR 1.136(a). In an event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.  If the period for mys specialle date is that the common of 37 CFR 1.136(a) within the statutory retirement of thinty (30) days will be considered timely.  If the period from the special common of 37 CFR 1.136(a) within the statutory retirement of thinty (30) days will be considered timely.  If the period from the special common of 37 CFR 1.136(a) within the statutory retirement of thinty (30) days will be considered timely.  If the period the special common of the statutory retirement of thinty (30) days will be considered timely.  If the period the special common of the statutory retirement of the special common of the special commo								
THE MAILING DATE OF THIS COMMUNICATION.  Extensions of airm rapts be without worther provisions of 3 cPR 1.13(b). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of the communication.  If NO period for reply is specified above, the misumm statushory period with the statution vincinners of thirty, 200 days with the considered timely.  If NO period for reply is specified above, the misumm statushory period with pays and will explice X(6) MONTHS from the mailing date of this communication.  Failure to reply within the set of extended period for reply will, by statute, cares the application to become ABANDONED (35 U.S. C. § 133).  Any reply received by the Office after han there minorial after the mailing date of this communication, even if timely filed, may reduce any and the provision of the communication of the com	The MAILING DATE of this communication apprend for Reply	ears on the cover sheet with the c	orrespondence address					
2a)  This action is FINAL. 2b)  This action is non-final.  3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4)  Claim(s)	THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).  - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).							
3	1) Responsive to communication(s) filed on 25 M	<u>larch 2003</u> .						
closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4)	2a)⊠ This action is <b>FINAL</b> . 2b)□ This	s action is non-final.						
4) □ Claim(s) 22-32 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration.  5) □ Claim(s) is/are allowed. 6) □ Claim(s) is/are rejected. 7) □ Claim(s) is/are objected to. 8) □ Claim(s) are subject to restriction and/or election requirement.  Application Papers  9) □ The specification is objected to by the Examiner.  10) □ The drawing(s) filled on is/are: a) □ accepted or b) □ objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  11) □ The proposed drawing correction filled on is: a) □ approved b) □ disapproved by the Examiner.  If approved, corrected drawings are required in reply to this Office action.  12) □ The oath or declaration is objected to by the Examiner.  Priority under 35 U.S.C. §§ 119 and 120  13) □ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a) □ All b) □ Some * c) □ None of:  1. □ Certified copies of the priority documents have been received.  2. □ Certified copies of the priority documents have been received in Application No  3. □ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  14) □ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 119(e) (to a provisional application).  a) □ The translation of the foreign language provisional application has been received.  15) ☑ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.  National Paper Note	closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.							
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## **DETAILED ACTION**

## Response to Arguments

Applicant's arguments with respect to claims 22-32 have been considered but are moot in view of the new ground(s) of rejection.

Regarding the applicant's argument that Rhodes "teaches away from a self-expanding device", MPEP 2145 states:

"A known or obvious composition does not become patentable *simply because it has*been described as somewhat inferior to some other product for the same use."

Therefore, though Rhodes discloses self-expanding frames as inferior, this does not constitute "teaching away".

## Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 22-24, 27, and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lazarus et al. (5,275,622) as cited in Applicant's IDS, in view of Rhodes (5,122,154). Lazarus et al. discloses a graft comprising: a plurality of discrete non-overlapping self-expanding frames which may be inside and extend beyond the length the graft, that have hooks as wall engaging members and a helix configured at

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their apices (Fig. 11), however Lazarus et al. fails to disclose the frames substantially along the length of the graft. Rhodes teaches discrete frames along the length of the graft (Fig.7), which adds strength and flexibility, enabling the use of a longer graft (col. 3, lines 47-52). It would have been obvious to one of ordinary skill in the art to combine the teaching of discrete frames along the length of the graft, as taught by Rhodes, to a graft comprising a plurality of frames extending beyond the length of the graft as per Lazarus et al., in order to add strength and flexibility to the graft, enabling the use of a longer graft.

Claims 22, 25-26 and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rhodes (5,122,154) in view of Lazarus et al. (5,275,622). Rhodes discloses a graft comprising: a plurality of discrete non-overlapping self-expanding frames (30) along its length, which may be inside the graft (col. 4, lines 19-22), and have wall engaging members (col. 7, lines 18-30), and wherein the graft is pleated, which may provide a tapered profile (Fig. 6) however Rhodes fails to disclose the frames as self-expanding. Lazarus et al. teaches self-expanding frames (Fig.11) to yieldably urge the graft from a compressed position to a second expanded condition (col. 8, lines 44-49). It would have been obvious to one of ordinary skill in the art to combine the teaching of self-expanding frames, as taught by Lazarus et al., to a graft as per Rhodes, in order to yieldably urge the graft from a compressed position to a second expanded condition.

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### Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas C. Barrett whose telephone number is (703) 308-8295. The examiner can normally be reached Tuesday-Friday between 9:00 A.M. and 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (703) 308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3580 for regular communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308 0850.

Thomas Barrett June 12, 2003

David H. Willse Primary Examiner